



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

TO: Barry E. Hill, Director, Office of Environmental Justice ("OEJ")
Office of Enforcement and Compliance Assurance ("OECA")

FROM: Theodore J. Kim, Legal Counsel, OEJ/OECA /s/ *Ted Kim*

DATE: November 14, 2005

RE: "Environmental Justice in the News" for the Week Ending November 18, 2005

This memorandum summarizes select environmental justice news actions for the period beginning November 7, 2005 through the week ending November 18, 2005. The summary is limited to Lexis/Nexis searches conducted using the query: "(environment! w/2 (justice or racism or equity or disproportionate or disparate)) or (environment! w/25 minorit! or low***income) or (executive order 12898) or (civil right! w/25 environmental) or ("fair housing act" w/25 (environment! or zon!))." Please note that multiple articles covering the same topic were not included. Similarly, articles on international or foreign-based environmental justice issues were not included, unless they specifically pertained to the United States.

1. **News Items.**

The following news was particularly noteworthy:

- **"EPA Says High Court Bars Stressing Race in Environmental Justice Plan," Inside EPA (Nov. 26, 2005).** The article stated that the United States Environmental Protection Agency's ("EPA") Office of Environmental Justice ("OEJ") is responding to criticism that it failed to consider race and income in identifying communities disproportionately affected by environmental hazards. However, EPA does consider race and income, but it does not use race as a decision-making factor since it is constitutionally unable to do so based on the Supreme Court's holdings in Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995) and Gratz v. Bollinger, 539 U.S. 244 (2003). OEJ's critics, however, reject EPA's legal argument. The controversy stemmed from EPA's issuance of a draft Environmental Justice Strategic Plan in June, which the Agency will not finalize. The critics argued that race should be a key decision-making

factor. EPA rejected these arguments and noted that race is considered to the extent that the law permits. In addition, the article noted that EPA's Administrator Stephen L. Johnson issued a memorandum on November 4, 2005 that reaffirmed EPA's commitment to environmental justice. In his memorandum, Administrator Johnson wrote, "EPA maintains an ongoing commitment to ensure environmental justice for all people, regardless of race, color, national origin, or income." The memorandum directed EPA staff to incorporate environmental justice considerations into its programs, policies, and activities, and into its planning and budgeting processes. In addition, the Office of the Chief Financial Officer has issued supplemental guidance to the Agency's Goal Teams to integrate environmental justice considerations into the Strategic Plan for Fiscal Years 2006-2011.

- **"Katrina Turns Oil-Contaminated Town into the Epitome of Despair, Times-Picayune (Nov. 21, 2005).** Residents of Meraux, Louisiana have sued the Murphy Oil Company ("Murphy") after one of its tanks came off its base and broke during Hurricane Katrina, which resulted in the spillage of massive amounts of crude oil into 1,700 homes. Nineteen lawsuits were filed and later consolidated into one class-action suit claiming that the tank broke due to the company's negligence. Specifically, the issue is whether Murphy filled that tank prior to when Hurricane Katrina hit, which is a standard refinery safety practice that ensures that the tanks maintain structural integrity and do not float away. According to the article, evidence indicated that Murphy failed to fill the tank in anticipation of the storm, and the Company refused to comment on the amount of fuel that was in the tank. While environmentalists are critical of the company, many residents appear to be unwilling to criticize Murphy because, as environmental activist Wilma Subra articulated, "[i]t's a company town . . . [people hesitate] to speak out because of fear of retaliation."
- **"Landfill's Reopening is Raising New Stink," Times-Picayune (Nov. 21, 2005).** Despite the fact that it fails to meet some of New Orleans' basic environmental requirements, the Old Gentilly Landfill reopened six weeks ago, after a nearly two decade hiatus, and has been one of the area's busiest landfills. Senators David Vitter (R-La.) and James Inhofe (R-OK) have voiced their concerns that reopening Old Gentilly may result in ecological nightmares and wonder why it was reopened in light of the abundance of other nearby landfills. While the regulators that reopened the landfill have offered conflicting reasons for reopening the landfill, they all agree that Old Gentilly was an ideal location for a landfill since others are too far away. The article noted that EPA provided a recent assessment of the landfill and gave Old Gentilly an "acceptable bill of health." Environmentalists and critics dispute this characterization. While they acknowledge that the landfill is located in an area that is already polluted and sparsely populated, they believe that Old Gentilly is a poor place for a

landfill because of its proximity to wetlands and waterways. Specifically, they point to the fact that the bottom of the waste site underneath the landfill is unlined, which may result in the leaching of toxic materials into those waters.

- **“Deal Requires Testing Wells for Perchlorate Contamination,” Press Enterprise (Riverside, CA Nov. 17, 2005) at B01.** The Santa Ana Regional Water Quality Control Board (“Board”) unanimously voted in favor of a settlement that will require Goodrich Corporation (“Goodrich”) to drill test wells and determine the extent of perchlorate contamination that exists in water wells in Rialto and Colton, California. The settlement does not include an order that replaces the water; however, the testing, which will take place over 10-months, will provide more information on the perchlorate plume. Fifteen wells in Rialto and Colton are currently contaminated with an underground plume of perchlorate, which is believed to have seeped in from an industrial area where Goodrich and other companies had operated for the past 50 years. The settlement did not completely satisfy everyone, as one environmental activist noted in stating, “[t]he critical part for the community is to not have any perchlorate in the drinking water. That wasn’t accomplished tonight.” The Board retained the right to order Goodrich to provide water replacement after the 10-months of testing.
- **“Business Briefs,” Savannah Morning News (Nov. 16, 2005).** The Minority Worker Training Program grant was awarded to Harambee House, Inc./Citizens for Environmental Justice in collaboration with Clark Atlanta University and Dillard University. The five-year grant will fund a program that will train 15 to 20 participants in the areas of construction and environmental clean-up.
- **“‘Greater Boston Breathes Better’ Partnership Improving Air Quality in Metro Area New EPA Grant Spurs Additional Clean Air Efforts,” U.S. Fed News (Nov. 16, 2005).** EPA presented a new grant of \$120,000 to the Commonwealth of Massachusetts on November 16, 2005 to install advanced pollution controls on equipment used in construction projects in Massachusetts. The grant demonstrates EPA’s commitment to its new partnership, “Greater Boston Breathes Better,” with the Commonwealth, the City of Boston, and numerous local businesses to identify new strategies to reduce transportation and construction pollution in Boston. EPA Region I Administrator Robert W. Varney touted the new grant, stating that it will “reduce diesel emissions at state construction projects, many of which are in environmental justice communities.” Specifically, funds to retrofit construction equipment will be directed to construction projects within environmental justice communities and help reduce air pollution, from, among other things, diesel emissions, in these areas that are often disproportionately burdened by environmental risks.

- **“Three Rhode Island Organizations Awarded EPA Grants to Promote Healthy Communities and Environmental Education,” State News Service (Nov. 15, 2005).** EPA awarded three grants that totaled nearly \$70,000 to three groups who work to improve the quality of life for local residents. Southside Community Land Trust was awarded \$30,000, under a Healthy Community Grant, which is targeted to invest actions in environmental justice areas of potential concern, for its program called “Healthy Soil-Healthy Food Through Urban Agriculture Project.” The program will train and educate low-income urban gardeners, youth, and the general public to assess lead pollution, improve garden soils, and grow food safely using integrated pest management methods. In addition, Southern Rhode Island Conservation District was awarded \$30,000, under a Healthy Community Grant, for its program, “Three Sisters, Many Tribes, One People.” This program will specifically work with the urban Indigenous American community of Providence. Finally, Groundwork Providence was awarded \$9,497, under an environmental education grant, to promote green space and work with underserved high school youth to implement sustainable tree stewardship programs for school students around the schools they attend.
- **“Book Digs Beneath Camden’s Reputation to Explain Downfall and Potential,” Courier-Post (Cherry Hill, N.J. Nov. 13, 2005).** The article discussed a new book by Howard Gillette Jr., entitled “Camden After the Fall – Decline and Renewal in a Post-Industrial City,” that recounted Camden’s history. The book characterizes Camden as the source of “environmental justice litigation that carries implications well beyond the city and the state. . . . Every urban policy initiative of the past fifty years has been tried and tested in Camden.” Mr. Gillette noted how Camden changed from an area of prosperity to one of poverty, which resulted in the segregation of minorities, as well as poor and lower working-class people. According to the book, “this geographic concentration of economically struggling families and individuals drives the social, economic, and educational dysfunction afflicting the city - - not the simplistic and racist assumption on the part of some whites that the city’s decline is due to the rise in size of its black and Hispanic communities.” This idea gave rise to the book’s primary argument that “only through a regional or ‘metropolitan’ approach can Camden be renewed in a way that benefits not only real estate developers and the politically connected, but the people who live there.”
- **“Better Testing Urged for Sites of New Schools,” Boston Globe (Nov. 13, 2005) at 1.** The head of a new School Building Authority that is responsible for overhauling Massachusetts’ school assistance program stated that he will require communities to test all sites for contamination “long before the backhoes roll in.” This new initiative stemmed from incidences where contamination was discovered at existing schools, which

resulted in large cleanup costs. Under the old system, environmental assessments were only mandated for new schools built on new sites. Environmentalists, who believe that it is increasingly difficult to find clean sites for school construction, appear satisfied with the new measure, because it will require communities to investigate before renovations, expansions, or new construction, which means that they will better understand what toxic materials may exist. The measure may be particularly useful in places like Boxford, Massachusetts where the drinking water of one of its schools, Spofford Pond Elementary, recently tested positive for perchlorate and tested positive for mercury two years ago.

- **“Ford Cleanup Will be Reviewed; EPA to Investigate Its Own Actions,” Herald News (Passaic County, N.J. Nov. 11, 2005) at D01.** EPA plans to investigate its actions regarding the Upper Ringwood neighborhood, which the Agency believes may contain numerous environmental justice issues. The EPA Regional Administrator ordered this review following a tour last month of the area, which residents claim houses toxic waste from Ford Motor Company’s Mahwah plant. The neighborhood is home to a 400-member community of mostly Ramapough Mountain Indians. Since January, EPA has removed more than 7,600 tons of tainted soil containing paint sludge. Residents hope that EPA’s review will change the way it oversees the cleanup work and improves how it communicates with the community.
- **“Fred Hutchinson Cancer Research Center; Racial/Ethnic Minorities Increasing in Government-Funded Networks of U.S. HIV Vaccine Trials,” Genetics and Environmental Business Week (Nov. 10, 2005) at 23.** According to a study in *Public Health Reports*, racial and ethnic minorities have increased their participation in government-funded networks of HIV vaccine trials in the United States from 1988 to 2002. Based on these results, scientists are pleased by the increase in racial/ethnic minority participation; however, they urge the continued increase enrollment of diverse populations to this research.
- **“Civil Rights Complaints Filed Over Smelter Waste,” El Paso Times (Nov. 10, 2005) at 4B.** Citizens in West El Paso, Texas have sent complaints that allege that people may be exposed to hazardous materials at, and around, Smelter Cemetery. One complaint, from Juan Garza, dated October 18, 2005, was sent to EPA’s Civil Rights Office and alleged that the government failed to remove slag particles, which has created “disparate treatment” to Roman Catholic Hispanics. In addition, Mr. Garza requested that the Department of Justice investigate whether EPA Region VI, the Texas Commission on Environmental Quality, and the El Paso City-County Health and Environmental District failed to provide equal protection and due process under the United States Constitution.

Mr. Garza attributed the slag particles at the cemetery to Oglebay North, which is a slag-crushing company adjacent to the ASARCO smelter.

- **“Diesel Measure Will Help Clean New Jersey’s Air,” Ocean County Observer (Toms River, N.J. Nov. 10, 2005) at A10.** New Jersey approved Ballot Question 2 that would clean up diesel emissions. In approving Ballot Question 2, the voters ensured that an estimated \$160 million was earmarked to retrofit over 30,000 of the State’s transit buses, school buses, and publicly owned trucks with simple pollution control. In addition, the funding will cover, among other things, the cost of a research project that New Jersey’s Department of Environmental Protection will conduct to examine what further steps are necessary to protect children from diesel school bus emissions.
- **“EPA Awards \$332,000 Environmental Grant to Grace Hill Settlement House,” States News Service (Nov. 9, 2005).** On November 9, 2005, EPA Region VIII awarded a cooperative agreement grant, under its Community Action for a Renewed Environment (“CARE”) Cooperative Agreement Program, to the Grace Hill Settlement House (“Grace Hill”) in St. Louis. Grace Hill will use the \$332,439 in funding to address poor air quality in north and south St. Louis. Grace Hill includes seven neighborhood centers, two licensed day care centers, and a minority business center. It manages eight urban Head Start sites that serve 1,500 children.
- **“Rep. Higgins Announces \$275,000 for South Park Lake Aquatic Ecosystem Restoration Project Included in Final Bill Passage,” U.S. Fed. News (Nov. 9, 2005).** Representative Brian Higgins (D-N.Y.) issued a press release announcing that he had secured \$275,000 for the South Park Lake Aquatic Ecosystem Restoration Project (“Project”) and that this money was included in the House Energy and Water Appropriations Conference Report that the House of Representatives passed on November 9, 2005. Under the Project, the Army Corps of Engineers will evaluate and identify the potential beneficial uses of the estimated 100,000 cubic yards of organic material that may be dredged from South Park Lake. Among the Project’s beneficial results is its anticipated impact on environmental justice issues. Specifically, the Project will return “recreational opportunities to urban residents, especially youths, to once again be able to explore and discover an appreciation for ecology and natural systems.”
- **“Katrina-Floodwalls Investigations,” Broadcast News (Nov. 9, 2005).** The Louisiana Attorney General’s office is attempting to determine whether to pursue criminal or civil action due to the collapse of the canal floodwalls during Hurricane Katrina. Attorney General Charles Foti is investigating whether poor construction or design flaws contributed to

wall failure in New Orleans. If the walls are determined to be flawed, the Attorney General's office may seek a declaratory judgment in an Orleans Parish civil court, which could help homeowners get their insurance companies to cover the damage.

- **“Environmental Justice and the Big Flush,” Roanoke Times (Nov. 9, 2005) at B9.** Mike Ellerbrock, the Director for the Center for Economic Education at Virginia Tech, wrote this editorial piece in which he articulated his view that the Nation's environmental justice movement has been stuck in slow motion. In characterizing New Orleans as the “Big Flush,” rather than the “Big Easy,” Mr. Ellerbrock noted that the aftermath of Hurricane Katrina demonstrated that millions of the Nation's poor and racial minorities are disproportionately exposed to environmental hazards. In addition, he noted that victims of the storm are also those that are least able to afford adequate medical insurance and services. Mr. Ellerbrock asserted that “environmental racism transcends economic class” and noted that studies have demonstrated that “at all levels of income, black and brown Americans are disproportionately exposed relative to white citizens to toxic hazards, chemical pollution, and aesthetic degradation.” Mr. Ellerbrock concluded by setting forth recommendations to address the environmental injustice he identified, including: (1) ascertaining local environmental hazards; (2) demanding investigations by state and local environmental specialists and funding for remediation by elected officials; and (3) creating a national dialogue on what constitutes a minimum baseline quality of life below which no one should live. The baseline must include economic factors, environmental risks, and social capacity.
- **“Massive Effort Planned to Deal with Toxins Deposited in Soil by Flood,” Dallas Morning News (Nov. 6, 2005).** The Army Corps of Engineers (“Corps”) will undertake one of the biggest environmental cleanups ever by removing miles of sediment containing carcinogenic chemicals from areas in New Orleans that Hurricane Katrina and Hurricane Rita damaged. While the remedial plans are not finalized, the article noted that the crews plan to work on cleaning nearly the entire city and its suburbs. Despite this planned cleanup effort, local environmentalists and other members of the public are unhappy that they have not been included in the decisionmaking process. The Corps estimates the removal work would take 45 to 58 days after the plans are approved.
- **“Bridge Planning Begins,” The Cincinnati Enquirer (Nov. 6, 2005).** Engineers are mapping out the Brent Spence area of Ohio in anticipation of the construction of a new bridge at the chokepoint along one of America's busiest highways. Among the potential issues to be considered are all of the area's hazardous waste sites, which include an estimated 57 underground storage tanks and another 37 companies that generate

hazardous waste, and poor and minority neighborhoods that are considered environmental justice areas. With regard to the environmental justice issues, the engineers are ensuring that it complies with Executive Order 12898 and will not focus on low-income areas as a way to reduce property acquisition costs. In addition, they plan to conduct more studies and encourage more public participation in low-income and minority areas.

- **“New Haven Awarded \$300,000 by EPA to Improve Environment and Reduce Toxic Emissions, Nov. 4,” States News Service (Nov. 4, 2005).**

As part of its CARE program, EPA awarded the City of New Haven’s Green New Haven Project approximately \$300,000 on November 4, 2005. New Haven was one of twelve communities that the CARE program, which helps communities address environmental concerns through community-based, local strategies, funded nationally. New Haven will use the funding to expand its existing air toxics initiative into a comprehensive air, water, and land stewardship program. However, the program will continue to pursue broad reductions in air toxic and particulate air emissions from point areas and on- and off-road sources. In addition, New Haven will continue to work to target reduction in diesel emissions. New Haven will also use the funds to improve its environment as well as the health of its residents through other efforts, including improving wastewater treatment facilities and protecting sensitive wetlands.

- **“EPA Provides Environmental Job Training Grant to Shreveport for Evacuees,” States News Service (Nov. 4, 2005).**

EPA awarded the City of Shreveport, Louisiana \$200,000 to provide environmental cleanup training to local workers that Hurricane Katrina and Hurricane Rita displaced. The City plans to train 50 employees in environmental cleanup over the next two years and will train evacuees living in the area to speed redevelopment at sites contaminated with hazardous substances. This grant supplements recent funding that the National Institute of Environmental Health provided to train local workers in environmental remediation, including: (1) \$1.2 million to the Dillard University Deep South Center for Environmental Justice for its minority worker training program; and (2) \$5.5 million to the Center to Protect Workers Rights to train workers in seven cities across the Nation, including New Orleans, in hazardous waste remediation, hazardous materials disaster preparedness, and Brownfields redevelopment.

- **“ADEM Urged to Curb Industrial Air Pollution in Mobile County,” Associated Press State and Local Wire (Nov. 4, 2005).** The Florida-based Legal Environmental Assistance Foundation (“LEAF”) called on the Alabama Department of Environmental Management (“ADEM”) to amend its air pollution standards to strictly control toxic emissions and ensure that minority communities in Mobile County, Alabama are not

excessively exposed to the chemicals. LEAF's plea to ADEM stemmed from LEAF's report that found that Mobile County had the largest amount of hazardous air pollutants compared to other counties. LEAF noted that Mobile County is considered an environmental justice area and recommended that ADEM develop technology to assess exposure risks to residents. In response, ADEM voiced its concerns with LEAF's findings and promised to further investigate the situation.

- **“Environmental Law; Recovering from Katrina,” *New York Law Journal* (Nov. 3, 2005) at 3.** The article articulated the view that environmental lawyers have a critical role in shaping recovery efforts from Hurricane Katrina and “in creating balanced procedures that permit prompt action by responsible agencies, while protecting the [N]ation’s long-term interest in both environmental protection and the public support that is essential to a successful recovery program.” It described the threshold task in planning for New Orleans’ recovery as defining the size and kind of city to be restored. Specifically, the article advocated that “the adverse impacts of Katrina, so disproportionately affecting minority groups and the poor, must now be mitigated through a broad governmental and societal commitment to recreate an urban environment that is not simply economically viable, but also serves the diverse population that previously made New Orleans it home.” In addition, the article noted that existing environmental laws provide adequate emergency exemptions to address short- and long-term recovery, such that the proposed legislation to exempt New Orleans and the Gulf Coast recovery efforts from environmental laws is unnecessary. Moreover, the article called for the creation of a comprehensive generic, or “programmatic,” environmental impact statement (“EIS”) under the National Environmental Policy Act (“NEPA”) to address the major impacts of alternative redevelopment schemes for the city, as well as satisfy applicable legal requirements and provide for public participation in the planning process. Finally, the article opined that an appropriate lead agency should carry out the EIS review and coordinate the recovery and development plans consistent with applicable state and federal environmental and other laws. It suggested that the lead agency could be a “newly created Louisiana redevelopment authority, a congressionally chartered redevelopment authority or an interstate compact agency established by Louisiana and Mississippi to address regional Gulf Coast redevelopment.”

2. **Recent Litigation.**

- **Cox v. City of Dallas, No. 04-11304m 2005 U.S. App. LEXIS 24140 (5th Cir. Nov. 9, 2005).** The Fifth Circuit affirmed the lower court’s holding that, among other things, granted summary judgment to the City of Dallas (“City”) against a claim by homeowners that the City racially

discriminated against them by persistently failing to police the operation of an illegal dump near their homes pursuant to the Fair Housing Act (“FHA”). Open dumping of solid waste occurred at a gravel pit, which was issued a specific use permit for a mining operation, that was located in the predominantly black Deepwood neighborhood. The homeowners alleged massive illegal dumping at the site and asserted that the City violated Section 3604(a) of the FHA by failing to prevent dumping at the site. Specifically, the homeowners argue that the City violated FHA § 3604(a), because the dump made it more difficult to sell their houses and lowered the value of their houses. Accordingly, the issue was whether the City violated the FHA by “‘otherwise making unavailable or denying’” a dwelling to any person because of race. The Fifth Circuit dismissed this argument in holding that “[t]his claim enjoys factual support, but it is not a claim of ‘unavailability’ or ‘denial’ of housing under a proper reading of the FHA. The City’s failure to police the Deepwood landfill may have harmed the housing market, decreased home values, or adversely impacted homeowners’ ‘intangible interests,’ but such results do not make dwelling ‘unavailable’ within the meaning of the Act.” In addition, the court found that the homeowners’ allegations that the City violated Section 3604(b) of the FHA by failing to prevent dumping lacked merit. Specifically, the homeowners contended that the City discriminated against them in the provision of a service, *i.e.*, it failed to enforce zoning laws. The Fifth Circuit again dismissed this claim in holding that even “assuming that the enforcement of zoning laws alleged here is a ‘service,’ . . . § 2604(b) is inapplicable here because the service was not ‘connected’ to the sale or rental of a dwelling as the statute requires.”

3. Regulatory/Legislative/Policy.

The following items were most noteworthy:

A. Federal Congressional Bills and Matters.

- **House Resolution 4197, “Hurricane Katrina Recovery, Reclamation, Restoration, Reconstruction, and Reunion Act of 2005,” introduced on November 2, 2005 by Representative Melvin L. Watt (D-N.C.).** *Status: Referred to the House Committee on Ways and Means.* The Bill provides for the recovery, reclamation, restoration, and reconstruction of lives and communities, as well as for the reunion of families devastated by Hurricane Katrina. In addition, the Bill addresses the issues of poverty that Hurricane Katrina exposed. Among the noteworthy items included in the Bill are: (1) the establishment of a Hurricane Katrina Victim Restoration Fund; (2) the requirement that EPA, in consultation with the affected states, develop a comprehensive environmental sampling and toxicity assessment plan (“CESTAP”) to determine the immediate and long-term hazards posed by exposure to toxins and infectious materials

that Hurricane Katrina, and the subsequent flooding, released into the environment; (3) the establishment of construction and repair grants; and (4) provisions for Temporary Assistance to Needy Families.

- ***Miscellaneous House and Senate Congressional Record Mentions of Environmental Justice include:***

- **“Contractor Liability and Environmental Laws,” Statement of Beverly Wright, Director of the Deep South Center for Environmental Justice, before the Superfund, Toxics, Risk, and Waste Management Subcommittee of the Senate Environment and Public Works Committee on November 8, 2005.** Dr. Beverly Wright discussed critical issues of environmental concern that resulted from the damage that Hurricane Katrina inflicted in the Gulf Coast region. Dr. Wright voiced particular opposition to the “Gulf Coast Recovery Act” (S. 1761), which she believed was “particularly egregious to low income and minority communities in the Gulf Coast Region.” She noted that the Bill, in waiving certain public health, safety, and environmental laws, would provide unprecedented legal protection to contractors who are performing rescue, recovery, repair, and reconstruction work related to Hurricane Katrina. Dr. Wright asserted that eliminating the liability of contractors would result in reduced protection for the public, because the incentive to perform good work was lowered by the lack of consequences for failure to do so. In support of her opposition to S. 1761, Dr. Wright further noted that Hurricane Katrina struck a region that is disproportionately African American and poor and stated that “New Orleans is prototypical of environmental justice issues in the Gulf Coast Region.” In describing the environmental contamination that Hurricane Katrina caused, Dr. Wright detailed a wide range of environmental justice issues and concerns in the Region. Dr. Wright concluded by pointing out that “[h]ow, when, and what level (methods of clean-up and clean-up standards) contaminated neighborhoods get cleaned up is a major environmental justice concern for African American communities.”

- **“Panel III of the Hearing of the Senate Environment and Public Works Committee: Response to Hurricane Katrina,” on November 2, 2005, chaired by Senator David Vitter (R-LA).** The Senate Environment and Public Works Committee heard the testimony of two witnesses: (1) Ms. Kim Dunn Chapital, who serves as the environmental trainer for unemployed and underemployed minorities living in low-income communities of color for the Deep South Center for Environmental Justice; and (2) Mr. William Hines, the Director of Greater New Orleans, Inc., which is a public-private partnership that spearheads economic

development initiatives in New Orleans. In her testimony, Ms. Dunn Chapital urged EPA and other health agencies to immediately broaden the environmental testing to identify toxic and hazardous sites for remediation and cleanup. In addition, she asked the Committee to reject all efforts to waive and weaken public health and environmental laws. Finally, she requested increased distribution of information to low-income individuals. In response to questioning following her testimony, Ms. Chapital asserted that inadequacy remained in how, and what type of, information was distributed. In his testimony, Mr. Hines highlighted the regional economic activity that must be restored in the aftermath of Hurricane Katrina, which included: (1) restoration and enhancement of the levee and barrier system; (2) full restoration of port services; and (3) restoration of the tourism industry.

- **Federal Register Notices.**

- **EPA, Dicloran Risk Assessments, Notice of Availability, 70 Fed. Reg. 69,551 (Nov. 16, 2005).** EPA announced the availability of its risk assessments and related documents for the nitroaniline pesticide dicloran. In soliciting public comment on these documents by January 17, 2006, EPA requested that the public suggest risk management ideas or proposals to address the identified risks. EPA is developing a Reregistration Eligibility Decision (“RED”) for dicloran through a modified four-phase public participation process. To help address potential environmental justice issues, EPA seeks, among other things, “information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to dicloran compared to the general population.”
- **GSA, Notice of Availability of the Draft Environmental Impact Statement for Improvements to the Andrade Port of Entry, Andrade, California, 70 Fed. Reg. 68,456 (Nov. 10, 2005).** The General Services Administration announced the availability of the Draft EIS for improvements to the Andrade Port of Entry. The draft EIS identified the expected environmental impacts from facility operations for six reasonable alternatives, including a “No Action Alternative” for new operations and facilities, and presented comparisons of these impacts among the alternatives. For each alternative, impact discussion was presented by resource area (*i.e.*, land use) or topic area (*i.e.*, environmental justice). The comment period ends on January 6, 2006.
- **EPA, Propylene Oxide Risk Assessment, Notice of Availability, and Risk Reduction Options, 70 Fed. Reg. 68,031 (Nov. 9,**

2005). EPA promulgated this notice that announced the availability of its human health risk assessment and related documents for the insecticidal fumigant pesticide propylene oxide (“PPO”). In addition, to soliciting public comment on these documents on or before January 9, 2006, EPA also requested risk management ideas or proposals to address identified risks. EPA is developing a RED for PPO through a four-phase public participation process. To help address potential environmental justice issues, EPA seeks, among other things, “information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to PPO compared to the general population.”

B. State Congressional Bills and Matters.

· **“Governor Richardson Announces Effort to Improve Environmental Decision Making Process,” Press Release (Nov. 18, 2005).** On November 18, 2005, New Mexico’s Governor Bill Richardson launched an effort to address the issue of environmental justice. Specifically, Governor Richardson signed an Executive Order that directed the “state government to provide meaningful opportunities for involvement in environmental decisions to all people regardless of race, color, ethnicity, religion, income, or education level.” To accomplish this, the Executive Order set forth five specific provisions, which were: (1) the dissemination public health and environmental information in Spanish, English, as well as tribal languages and dialects; (2) the annual review of programs and policies that protect human health and the environment to ensure that program implementation and information dissemination meet the needs of the minority and/or low-income communities; (3) all relevant cabinet-level departments, boards, and commission should examine all available environmental and public health data to address impacts on minority and/or low-income communities; (4) the creation of a state government task force to recommend actions to address environmental justice issues; (5) an annual meeting of the Task Force and the annual reporting of accomplishments to the Governor.